THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION No.16647 of 2005

20.9.2005

Between:

1. Mandela Naga Surya Ranga Rao, S/o.Kondala Rayudu,

Gorintada, Palkol Mandal, West Godavari District

And others.

... Petitioners

AND

1. Special Cadre Deputy Registrar of Co-operative Societies -

O.S.D/D.C.C.Bank, Eluru, West Godavari District

And another.

... Respondents

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ORDER:

The writ petition is filed challenging the order dated 02.6.2005 in M.A.No.32 of 2005 in O.A.No.64 of 2005 on the file of the A.P.Cooperative Tribunal, Vijayawada, whereunder while ordering stay, instead of accepting security, a direction is given to the petitioners to deposit 50% of the amount of liability fixed against them.

The facts of the writ petition, in brief, are that the heads of the families of the respective petitioners were obtained agricultural loans from the second respondent society in 1994 and cleared away the said loans in 1996. But, the second respondent society fixing the liability on the petitioners, who are the legal heirs of the original loanees (who are no more) notified their agricultural lands for auction on the ground of default in payment of loan amounts. The first respondent in CBCEP No.3512 of 1998-1999 proposed to sell the lands of the petitioners on 06.6.2005. Against the said orders, the petitioners filed an appeal being O.A.No.64 of 2005 on the file of the A.P. Cooperative Tribunal, Vijayawada. Along with the said O.A. they have also filed M.A.No.32 of 2005 for stay of the auction proceedings. The Tribunal while granting stay by an order on 02.6.2005 directed the petitioners to deposit 50%

of the amount involved in the O.A. Aggrieved by the said orders, the present writ petition is filed.

Heard the learned Counsel for the petitioners and learned Government Pleader for Cooperation.

The learned Counsel for the petitioners contended that the petitioners are not loanees but the legal heirs of the original loanees and the original loanees have already discharged the loan amounts due to the Cooperative Society. He placed a strong reliance on an unreported judgment of this Court in W.P.No.14760 of 2005 dated 14.7.2005 and on the proceedings of the Divisional Cooperative Officer, Bhimavaram dated 31.7.1996 whereunder it is stated that the original loanees made a complaint to the effect that the concerned authority of the Society having received the amounts from the members, failed to issue receipts.

On the other hand, the learned Government Pleader for Cooperation contended that Rule 11 of the A.P. Cooperative Tribunal (Procedure) Rules, 1994 (the Rules, for brevity) has no application to this case since it is a case of loans taken by the members of the society and therefore, they are bound to discharge the loan amounts.

The petitioners are the legal heirs of the original loanees. Challenging the orders passed by the Deputy Registrar of Cooperative Societies in CBCEP No.3512 of 1998-99 proposing to sell the petitioners' lands on 06.6.2005, they preferred an appeal being O.A.No.64 of 2005 before the A.P. Cooperative Tribunal, Vijayawada. Along with the said appeal, they filed an application being M.A.No.32 of 2005 whereunder the Tribunal ordered stay subject to remittance of 50% of the amount involved in the impugned E.P. on or before 15.6.2005, failing which the order of stay shall lapse without further notice.

Admittedly, the 50% of the amount involved in the impugned O.A., has not been deposited. The contention of the learned Counsel for the petitioners is that in similar circumstances, this Court directed the respondents to accept the surety. This Court in W.P.No.14760 of 2005 dated 14.7.2005 directed the first respondent to consider the petitioner's request for furnishing security of a value equal to 50% of cash deposit. Rule 11 of the Rules reads as follows:

11. Application for interim suspension order:

Where a party seeks the interim suspension of the impugned order, he shall file a separate application for the same. Every such application shall be supported by an affidavit in respect of applications for stay or suspension of the impugned orders passed by the departmental authorities, specially relating to misappropriation of amounts and sanction of benami loans, no interim orders in the nature of stay or suspension for a specified period shall be issued unless the application produces a cash deposit of not less than 50% of the amount involved in the impugned order or furnishes security of equal value as directed by the Tribunal.

A perusal of the above Rule shows that instead of cash deposit, security of equal value can also be furnished in respect of misappropriation of amounts or sanction of benami loans. Therefore, prima facie, that Rule has no application to the facts of the present case. In this case, though the petitioners are not the original loanees, they are the legal heirs of the original loanees. Therefore, the decision relied upon by the learned Counsel for the petitioners has no application to the facts of the present case. Simply by making an application to the Divisional Cooperative Officer, stating that concerned official of the Society did not issue receipts for the amounts paid by the members of the society, does not relieve the liability of the petitioners. There is no material from the record about the action, if any, taken by the petitioners in pursuance of the letter addressed to the Divisional Cooperative Officer and whether the Police enquired into the matter. The burden is on the petitioners to show that they have validly discharged the loan amounts payable to the Cooperative society and now they are not liable to pay any amount to the Society.

Considering all these circumstances, it can be held that the Tribunal has exercised its discretion in directing the petitioners to deposit 50% of the amount involved in the E.P. It is a discretionary order and such discretion of the Tribunal, in the present case, cannot be said to be perverse. Therefore, there are no grounds to interfere with the order passed by the Tribunal.

Accordingly, the writ petition is dismissed. No costs.

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(**K.C.BHANU,J**)

September 20, 2005.

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